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FOR WHA/CEN MKOPOLOW & NHATCHER, EB/IFD/OIA/JPROSELI  
L/CID/EDAUGHTRY  
PASS USTR  
TREASURY FOR DONOVAN/CHRISTOPULOS

E.O. 12958: N/A  
TAGS: [EINV](#) [KIDE](#) [ECON](#) [USTR](#) [NU](#)  
SUBJECT: 2006 EXPROPRIATION REPORT: NICARAGUA

REF: A. A) STATE 60284

[B. B\) 05 MANAGUA 1815](#)

[1](#)1. This cable provides proposed language for the Nicaragua chapter of the 2006 Report on Investment Disputes and Expropriation Claims. Embassy will send comprehensive annex with details of confiscated property claims by June 10, as requested in Ref A.

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Property Confiscation Claims  
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[1](#)2. Despite progress in recent years, the resolution of property cases in Nicaragua continues to be a serious problem. Since the Sandinista government left office in 1990, thousands of Nicaraguans and other nationals have registered claims with the Nicaraguan government for more than 28,000 properties--homes, farms, bank accounts and other assets--expropriated during the 1979-1990 Sandinista era. Most of those affected were Nicaraguans, but many were, or have since become, U.S. citizens.

[1](#)3. The government of Nicaragua has made continuing progress in resolving outstanding U.S. citizen claims, including those of individuals who became U.S. citizens after the decade of confiscation. The current Nicaraguan administration has made a concerted effort to resolve such claims involving properties held by different agencies of the government, notably the parastatal holding company CORNAP (Corporacion Nacional del Sector Publico).

[1](#)4. Beginning in late 2004, political forces aligned against the Nicaraguan president attempted to weaken the executive branch by using their control of the National Assembly to enact a series of constitutional and institutional changes. One of the measures was Law 512, which shifted responsibility for property claims resolutions from the executive branch to a National Property Institute under the control of the legislature (Ref B). Published on January 22, 2005, Law 512 included certain provisions affecting cases in the court system and others on appeal for a third tier administrative review. Though the Institute was never implemented, Law 512 had a chilling effect on claims resolutions for many months. Under the terms of an October 2005 political agreement, implementation of Law 512 was put on hold until after the January 2007 inauguration of the new administration. Until the November 2006 presidential and parliamentary elections are held and the composition of the new National Assembly is known, it will be difficult to predict the fate of the

National Property Institute and the extent of future progress.

¶5. Section 584 (c) (i) of H.R. 4818, Consolidated Appropriations Act, 2005 stated that after a cut-off date (subsequently set at August 1, 2005), new claims registered at the Embassy would not be considered in the U.S. government's determination on whether to extend future waivers to Nicaragua. However, the Property Office will continue to make note of new claims and assist all U.S. citizens with property claims. The new claimants receive assistance and constitute a separate database presently consisting of ten American citizen claimants pressing for resolution of 16 property claims. The U.S. Embassy in Managua has an American officer and two Nicaraguan attorneys on staff who assist U.S. citizens in filing and tracking their claims--positions unique to that post.

¶6. The 3,192 claims considered by the U.S. Embassy for the purpose of determining if an annual waiver is to be granted are those registered between January 1995 and July 31, 2005. They belong to a total of 1,137 individuals, of whom 269 were U.S. citizens at the time of confiscation. To date the Nicaraguan government has resolved 2,466 Embassy-registered claims. In some cases, property has been returned to claimants, although most receive compensation in the form of long-term, low-interest bonds. The Nicaraguan government has issued bonds to Embassy-registered claimants with a face value of an estimated US\$305.6 million. The GON has also resolved almost 2,000 U.S. citizen claims not registered with the Embassy.

¶7. As of June 1, 2006, there remain 727 active Embassy-registered claims of 319 U.S. citizens. Sixty-six of these claimants, who have 119 current claims, were U.S. citizens at the time of confiscation. The United States government will continue to press vigorously for resolution of all outstanding U.S. citizen property claims.

¶8. The usefulness of a strong performance by the GON in resolving property cases cannot be overemphasized. An internationally recognized arbitration or mediation mechanism could help demonstrate Nicaragua's commitment to economic stability, improve its property-related closure strategy, and provide a clear signal that longstanding property issues are being addressed equitably and effectively.

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Investment Disputes  
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¶9. Claimant A is a U.S. majority holder of a multinational group of investors set on constructing a dry canal in Nicaragua. The project proposes two deep-water container ports with "post-Panamex" capability, one at Monkey Point on the Atlantic and the other at Brito on the Pacific, connected by a 377-kilometer railroad. Claimant A began the project in 1994 and was granted first rights to a canal concession by the National Assembly in a 1996 televised signing. The May 2001 publication of Nicaraguan Law 2878 authorized an interagency commission led by the Ministry of Transportation and Infrastructure to issue a concession and associated permits for a feasibility study and final design.

¶10. The Interagency Commission has not made progress despite insistent pursuit by Claimant A and frequent intercessions by U.S. Embassy officers. Claimant A raises credible allegations that its intellectual property and work product has been misappropriated and provided by Government officials to a parallel company, tantamount to an expropriation. All of Claimant A's work has been performed in reliance upon agreements directly with the Government of Nicaragua. Claimant A has reported investing over US\$12 million in engineering, financial, market and other studies, as well as its local operations to date.

¶11. (SBU) Claimant A: Canal Interoceanico de Nicaragua or CINN.

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